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No.

Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

RIVCOM CORPORATION, a corporation,
Petitioner,

VS.

AGRICULTURAL LABOR RELATIONS BOARD;
AND UNITED FARM WORKERS OF AMERICA, AFL-CIO;
RIVERBEND FARMS, INC.; TRIPLE M FARMS, INC.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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QUESTION PRESENTED

Was Petitioner Rivcom Corporation denied due process under the Fourteenth Amendment when, following the California Court of Appeal's decision in favor of Petitioner which had become final by lapse of time for appeal, the California Supreme Court, on its own motion and without giving Petitioner prior notice and an opportunity to respond, reversed that Court of Appeal's decision without any written opinion or statement of reasons.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

I

OPINION BELOW

The decision of the California Fifth District Court of Appeal and the decision of the California Supreme Court are attached hereto as Appendix "B" and "A" respectively.

II

JURISDICTION

The decision of the California Supreme Court printed in Appendix "A" which is sought to be reviewed, was dated and entered July 3, 1980.

Rehearing by the California Supreme Court was denied on July 30, 1980. (See Appendix "F".)

The jurisdiction of this Honorable Court is invoked under § 1257(3) of Title 28 of the United States Code.

III

CONSTITUTIONAL PROVISIONS AND CALIFORNIA RULES OF COURT INVOLVED

The constitutional provisions involved include the due process clause of the Fourteenth Amendment of the United States Constitution; and Article VI, Sections 12 and 14 of the California Constitution. (See Appendix "G" through "I" respectively.)

The California Rules of Court involved include Rules 24(a) and 28(a). (See Appendix "J" and "K" respectively.)

IV

STATEMENT OF THE CASE

A. Background Facts

Prior to January 16, 1979, a ranch, formerly known as Rancho Sespe (located in Ventura County, California), was owned by P.I.C. Realty Corporation ("P.I.C."). Agricultural operations on the ranch were managed by National Property Management Systems ("NPMS"). NPMS employed approximately 137 farm workers and provided those workers with housing in labor camps located on the ranch as partial compensation for their services on the ranch. Those 137 farm workers were represented by Respondent United Farm Workers of America, AFL-CIO ("UFW") who had recently been certified by Respondent

Agricultural Labor Relations Board ("ALRB") as the exclusive bargaining representative for all NPMS employees.

On January 16, 1979, P.I.C. sold former Rancho Sespe to Newport Beach Development Co., Inc. ("Newport") who, in turn, leased the ranch to Petitioner Rivcom Corporation ("Rivcom" or "Rivcom Corporation"). When P.I.C.'s title transferred to Newport, NPMS terminated its 137 employees and gave them 24 hours to vacate the labor camp dwellings located on the ranch.

In the meantime, by January 17 or 18, 1979 Rivcom had staffed its agricultural operations on former Rancho Sespe (now Rivcom Ranch) with personnel from its other operations in Ventura County and Fresno County, California; and then sent notices to all former NPMS employees extending the time of their eviction for 30 days.

Subsequently, on January 19, 1979, and February 5, 1979, the UFW served Rivcom with unfair labor practice charges alleging, among other things, that Rivcom unlawfully sought to evict the former NPMS employees in retaliation for their union membership in violation of California Labor Code § 1153(a) and (c). Based on those charges, the ALRB issued a Consolidated Complaint on February 5, 1979 (ALRB Case Nos. 79-CE-1-OX and 79-CE-4-OX), and an 18-day hearing commenced before ALRB Administrative Law Officer ("ALO") Gomberg on March 9, 1979.

Eventually, on June 12, 1979, ALO Gomberg issued a recommended decision finding that Rivcom's attempt to evict the former NPMS employees was in retaliation for their union membership in violation of California Labor Code § 1153(a) and (c). That decision was subsequently

adopted by the ALRB on August 17, 1979 (reported at 5 ALRB No. 55). On September 13, 1979, Rivcom filed a Petition For Writ of Review of that ALRB decision with the California Court of Appeal, Fifth Appellate District (Case No. 5 CIV 5121). That Petition For Writ of Review was granted on August 26, 1980.

In the meantime (while the above-mentioned ALRB matter was progressing to the California Fifth District Court of Appeal), when the former NPMS employees failed to vacate the labor camp dwellings located at former Rancho Sespe after 30 days following Rivcom's January 17 or 18, 1979 notices, Rivcom commenced an unlawful detainer action against the former NPMS employees on or about March 2, 1979 in the Municipal Court of the State of California, County of Ventura (Case No. MC 1913).

At the conclusion of that unlawful detainer action, Ventura County Municipal Court Judge Bruce A. Thompson issued an "Intended Decision" on January 24, 1980, holding that Rivcom's attempt to evict the former NPMS employees was not discriminatorily motivated in retaliation for their union membership. Accordingly, Ventura County Municipal Court Judge Bruce A. Thompson ordered all former NPMS employees to vacate the labor camp dwellings located on former Rancho Sespe. That Intended Decision was then reduced to a judgment on April 25, 1980.

On January 28, 1980 (after Rivcom had filed its Petition For Writ of Review of 5 ALRB No. 55 with the California Fifth District Court of Appeal in 5 CIV 5121; and after the Ventura County Municipal Court had issued its Intended Decision in MC 1913), the ALRB filed a Petition For Tem-

porary Relief under California Labor Code § 1160.8 with the California Fifth District Court of Appeal in 5 CIV 5121. By that Petition, the ALRB requested the Fifth District Court of Appeal to enjoin Rivcom from taking further steps to evict the former NPMS employees in the Ventura County Municipal Court unlawful detainer action (MC 1913) until after the Fifth District Court of Appeal had rendered a decision regarding Rivcom's Petition For Writ of Review (5 CIV 5121) of the ALRB's prior order (5 ALRB No. 55). On February 19, 1980, however, the Fifth District Court of Appeal (in 5 CIV 5121) denied Respondent ALRB's Petition For Temporary Relief. (A copy of the Fifth District Court of Appeal's decision is attached as Appendix "B"). The Fifth District Court of Appeal's denial was filed and served on February 19, 1980.

B. Facts Leading Up to Rivcom's Instant Petition

On May 1, 1980 the ALRB filed a Petition For Writ of Mandate with the California Supreme Court (SF No. 24155) requesting that Court to issue a Peremptory Writ compelling the Fifth District Court of Appeal to set aside its previous denial of Respondent ALRB's prior Request For Temporary Relief in 5 CIV 5121.

Simultaneous with the filing of the above-mentioned Petition, the ALRB also filed a Petition For Writ of Mandate And/Or Certiorari with the California Supreme Court (SF No. 24156) requesting that Court to issue a Writ of Mandate compelling the Ventura County Municipal Court to set aside its unlawful detainer judgment (MC 1913) and stay all further proceedings in that unlawful detainer action pending the California Fifth District Court of Appeal's

determination of Rivcom's Petition For Writ of Review (5 CIV 5121) or, in the alternative, that the California Supreme Court issue a Writ of Certiorari granting review of the Ventura County Municipal Court's unlawful detainer judgment (MC 1913).

In addition to both of the ALRB's above-mentioned petitions, the former NPMS employees also filed with the California Supreme Court (SF No. 24157) a Petition For Writ of Mandate Or Alternatively Prohibition And Request For Stay, requesting essentially the same relief as requested by the ALRB (in SF No. 24156) as mentioned above.

Thereafter, on May 14, 1980, Rivcom filed with the California Supreme Court an extensive Memorandum of Points And Authorities In Opposition to the above-mentioned three petitions. Within its Opposition Brief, Rivcom attacked those three petitions on both substantive and procedural grounds.

Then, on July 3, 1980, the California Supreme Court issued three separate orders (attached as Appendix "C", "D", and "E") denying all relief requested by the above-mentioned three petitions (presumably for those reasons stated within Rivcom's May 14, 1980 Memorandum of Points And Authorities In Opposition to the said three petitions).

However, on that same date, the California Supreme Court also issued a separate Order (attached as Appendix "A") wherein the California Supreme Court transferred to itself, on its own motion, the entire matter pending before the California Fifth District Court of Appeal in 5 CIV 5121 (including the ALRB's prior Request For Temporary Relief which had already been decided by the Fifth District

Court of Appeal 135 days earlier). Within that decision, the California Supreme Court then vacated the Fifth District Court of Appeal's denial of the ALRB's prior Request For Temporary Relief and simultaneously granted that relief. The California Supreme Court then re-transferred 5 CIV 5121 back to the Fifth District Court of Appeal. No written opinion or statement of reasons accompanied that decision.

Prior to the California Supreme Court's transfer and decision in 5 CIV 5121, Rivcom received no notice that the California Supreme Court would, on its own motion, transfer to itself 5 CIV 5121; nor was Rivcom given an opportunity to respond to the California Supreme Court's own motion prior to the transfer and/or ultimate decision. Additionally, because no written opinion or statement of reasons accompanied that decision, Rivcom was and still is completely ignorant of the grounds for the sua sponte motion itself or the decision.

Therefore, on July 18, 1980, Rivcom filed a Petition For Rehearing with the California Supreme Court in 5 CIV 5121 wherein Rivcom raised the federal question at issue in this case. Within its Petition For Rehearing, Rivcom argued that the California Supreme Court did not have jurisdiction under the California Constitution to transfer and reverse the Fifth District Court of Appeal's prior denial of the ALRB's Request For Temporary Relief in 5 CIV 5121. Rivcom also argued that the Fifth District Court of Appeal's prior denial of the ALRB's Request For Temporary Relief was final and res judicata, and the California Supreme Court therefore had no authority to reconsider that decision. Rivcom also argued that its fed-

eral constitutional right of procedural due process was violated because the California Supreme Court transferred and decided 5 CIV 5121 on its own motion without giving Rivcom any prior or post notice and an opportunity to be heard. Finally, Rivcom argued that the California Supreme Court had improperly failed to issue a written opinion or statement of reasons in support of its transfer and reversal of the Fifth District Court of Appeal's prior denial of the ALRB's Request For Temporary Relief.

Based on those contentions, Rivcom requested the California Supreme Court to either (1) vacate its decision in 5 CIV 5121 and simultaneously declare that the Fifth District Court of Appeal's prior denial of the ALRB's Request For Temporary Relief remain in full force and effect, or, in the alternative (2) issue a written opinion or statements of reasons setting forth the grounds for the California Supreme Court's transfer and decision in 5 CIV 5121, and then allow Rivcom an opportunity to present arguments in opposition to that written decision.

On July 30, 1980, however, Rivcom's Request For Rehearing was denied without opinion or statement of reasons. (A copy of that denial is attached as Appendix "F").

By this Petition, Rivcom contends that the California Supreme Court's transfer and decision in 5 CIV 5121 (and the California Supreme Court's denial of Rivcom's Petition For Rehearing) deprived Rivcom of its federal constitutional rights under the Fourteenth Amendment to procedural due process for the reasons stated below.

V

ARGUMENT

A. Petitioner Rivcom Was Denied Due Process Because The California Supreme Court Had No Jurisdiction To Transfer And Reverse The Fifth District Court Of Appeal's Prior Final Decision In 5 CIV 5121

Due process under the Fourteenth Amendment of the United States Constitution is violated when a state court renders a judgment in excess of the jurisdiction conferred on that court by the state's own constitution. *Scott v. McNeal* (1894) 154 U.S. 34, 45-46, 38 L.Ed. 896, 901, 902, 14 S.Ct.Rptr. 1018, 1012. [See also, *Olney Runs After v. Cheyenne River Sioux Tribe* (1977) 437 F.Supp. 1035, 1038; *Field v. Boyle* (1974) 503 F.2d 774; *Morton v. Ruiz* (1974) 415 U.S. 199, 235, 39 L.Ed.2d 270, 94 S.Ct.Rptr. 1055; *Drummond v. Froehlke* (1972) 460 F.2d 264, 265; *Solomon v. LaRose* (1971) 335 F.Supp. 715, 723; *Bluth v. Laird* (1970) 435 F.2d 1065, 1071; *Vitarelli v. Seaton* (1959) 359 U.S. 535, 539-540, 3 L.Ed. 2d 1012, 79 S.Ct.Rptr. 968; *Service v. Dulles* (1957) 354 U.S. 363, 388, 1 L.Ed.2d 1403, 77 S.Ct.Rptr. 1152; *Hurtado v. California* (1884) 110 U.S. 516, 28 L.Ed. 232, 4 S.Ct.Rptr. 111; holding that due process under the Fourteenth Amendment of the United States Constitution is violated when a state exceeds the limitations on its authority imposed by the state's own Constitution and laws.]

When the California Supreme Court transferred and reversed the Fifth District Court of Appeal's prior decision in 5 CIV 5121, it exceeded the jurisdiction and authority conferred on it by the California Constitution and the California Rules of Court.

Article VI, Section 12 of the California Constitution, and California Rules of Court, Rules 24(a) and Rule 28(a) provide that the California Supreme Court may, on its own motion, transfer to itself for hearing a cause in a Court of Appeal, but in any event not more than *60 days* after the filing of a decision by the Court of Appeal.[1]

This principle has been recognized by both the California Supreme Court and the California Court of Appeal in *Chavez v. Sargent* (1959) 52 Cal.2d 162, 188, 339 Pac.2d 801; *Rockridge Place Co. v. City Council* (1918) 178 Cal. 58, 60, 172 Pac. 1110; and *National Bank v. Los Angeles Etc. Co.* (1906) 2 Cal.App. 659, 664, 84 Pac. 466. As was stated by the Court in *National Bank v. Los Angeles Etc., Co., supra:*

> "Under the provisions of Section 4, Article VI [now Article VI, § 12] of the Constitution, the judgment of the District Court of Appeal became final in that Court on February 7, and in this Court on March 9, 1906. This Court is, therefore, without power after the lapse of 60 days from the giving of the judgment of the District Court, to act upon the present application

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[1]Article VI, Section 12 of the California Constitution provides that "The Supreme Court may, *before decision becomes final,* transfer to itself a cause in a Court of Appeal."

Also, California Rules of Court, Rule 28(a) provides that "*within thirty days after a decision of a Court of Appeal becomes final as to that Court,* the Supreme Court, on its own motion . . . may order the cause transferred to itself for hearing and decision. . . ." Under California Rules of Court, Rule 24(a), "a decision of a Court of Appeal becomes final as to that Court thirty days after filing. . . ."

Thus, the California Supreme Court's authority to transfer an Appellate Court case to itself for hearing cannot be exercised more than 60 days after the filing of the Appellate Court's decision.

to transfer the cause. It was presented too late." (at 2 Cal. App., page 664).

In the instant matter, more than 60 days elapsed from the filing of the California Fifth District Court of Appeal's denial of the ALRB's Request For Temporary Relief and the California Supreme Court's transfer of 5 CIV 5121. The Fifth District Court of Appeal's decision denying the ALRB's Request For Temporary Relief was filed February 19, 1980. That decision thereafter became final on April 19, 1980 (60 days after filing). Nevertheless, the California Supreme Court did not transfer 5 CIV 5121 to itself for hearing and decision until July 3, 1980 (135 days after the filing of the Appellate Court's decision).

Thus, since the California Supreme Court's transfer of 5 CIV 5121 occurred more than 60 days after the Fifth District Court of Appeal's decision was filed, this Honorable Court should grant the instant Petition For Writ of Certiorari and vacate the California Supreme Court's decision in 5 CIV 5121; and this Honorable Court should simultaneously declare that the California Fifth District Court of Appeal's decision (in 5 CIV 5121 filed February 19, 1980, denying the ALRB's Request For Temporary Relief) remains in full force and effect.

B. Petitioner Rivcom Was Denied Due Process Because The California Supreme Court's Transfer And Decision Of 5 CIV 5121 Violated Both State And Federal Principles of Res Judicata.

When a state court fails to apply the doctrine of res judicata and this results in a loss of property to one of the litigants, the property owner's right to due process under

the Fourteenth Amendment is violated. *Sotomura v. County of Hawaii* (1978) 460 F.Supp. 473, 482.

In this case, when the California Supreme Court transferred and reversed the Fifth District Court of Appeal's decision in 5 CIV 5121 (after that decision had become final for all purposes) the Supreme Court failed to apply the federal and state principles of res judicata, and Rivcom was therefore denied due process of law.

Under California law, once a judgment becomes final by lapse of time for appeal or other direct attack, that judgment becomes res judicata and therefore binding not only on the parties, but also on the court rendering the decision [see *Mason & Associates, Inc. v. Guarantee Sav. & Loan Assn.* (1969) 269 Cal.App.2d 132, 74 Cal.Rptr. 669; *Grant v. Superior Court* (1963) 214 Cal.App.2d 15, 29 Cal.Rptr. 125] *and also* on all higher Courts including the California Supreme Court [see, *Todhunter v. Smith* (1934) 219 Cal. 690, 695, 29 Pac.2d 916[2]]. Moreover, a final judgment is binding on the parties and all courts even if the

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[2]As was stated by the California Supreme Court in *Todhunter v. Smith;* "By virtue of the doctrine of res judicata the final determination of a court of competent jurisdiction necessarily affirming the existence of any fact is conclusive evidence of the existence of that fact when it is again in issue in subsequent litigation between the same parties in the same or any other court. . . . *The final ajudication is binding and conclusive upon a high court in a subsequent action.*" (at 219 Cal., pages 694-695). (Emphasis added).

judgment was erroneous. *Weil v. Barthel* (1955) 45 Cal.2d 835, 837, 291 Pac.2d 30[3].

Under Federal law the same principle of res judicata is recognized. Once a judgment becomes final, that judgment becomes res judicata on all questions of law and fact determined therein so that those issues cannot be further litigated in a subsequent suit between the same parties or their privies, even if the judgment was based on an erroneous view of the law or facts. *Montana v. United States* (1979) 440 U.S. 147, 152, 59 L.Ed.2d 210, 216, 99 S.Ct.Rptr. 970; *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 157, 9 L.Ed.2d 644, 654, 83 S.Ct.Rptr. 554; *United States v. Moser* (1929) 266 U.S. 236, 241-242, 69 L.Ed. 262, 264, 45 S.Ct.Rptr. 66; *Oklahoma v. Texas* (1920) 256 U.S. 70, 85, 65 L.Ed. 831, 834, 41 S.Ct.Rptr. 420; *Southern Pacific Railroad Co. v. United States* (1897) 168 U.S. 1, 48-49, 42 L.Ed. 355, 377, 18 S.Ct.Rptr. 18.

As noted above, the Fifth District Court of Appeal's decision in 5 CIV 5121 denying the ALRB's Request For Temporary Relief *became final and therefore res judicata*

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[3]As was stated by the California Supreme Court in *Weil v. Barthel, supra,*: "[I]t is the general rule that a final judgment is res judicata of the issues involved therein where the trial court had jurisdiction." (at 45 Cal.2d, page 837).

"Since it appears that in the prior action the trial court had jurisdiction of the subject matter and of the parties thereto, and the judgment in such action has become final, it may not now be attacked by plaintiff on the grounds that it was incorrect. In *Ponas v. Great Western Packing Co.* this court, speaking through Mr. Justice Gibson, succinctly stated the applicable rule thus: 'An erroneous judgment is as conclusive as a correct one.' (21 Cal.2d 636, 640 [134 Pac.2d 242].)." (Citation at 45 Cal.2d, page 839).

on April 19, 1980 (60 days after filing that decision)[4]. Nevertheless, the California Supreme Court reversed that decision on July 3, 1980 after it had become final and res judicata. The California Supreme Court's transfer and reversal therefore denied due process to Rivcom by failing to give res judicata effect to the Fifth District Court of Appeal's final decision.

This Honorable Court should therefore vacate the California Supreme Court's decision in 5 CIV. 5121 and declare that the California Fifth District Court of Appeals prior decision in 5 CIV 5121 dated February 19, 1980 remains in full force and effect in accordance with the principles of res judicata.

1. The Violation Of State Law Alone Regarding Res Judicata Is Itself A Denial Of Due Process

Due process under the Fourteenth Amendment of the United States Constitution is violated when the state fails to follow its own rules of law. *Olney v. Runs After v. Cheyenne River Sioux Tribe* (1977) 437 Fed. Supp. 1035, 1038; *Field v. Boyle* (1974) 503 F.2d 774, 779; *Morton v. Ruiz* (1974) 415 U.S. 199, 235, 39 L.Ed.2d 270, 94 S.Ct. Rptr. 1055; *Drummond v. Froehlke* (1972) 460 F.2d 264, 265; *Solomon v. LaRose* (1971) 335 F.Supp. 715, 723; *Bluth v. Laird* (1970) 435 F.2d 1065, 1071; *Vitarelli v. Seaton* (1959) 359 U.S. 535, 539-540, 3 L.Ed. 1012, 79 S.Ct. Rptr. 968; *Service v. Dulles* (1957) 354 U.S. 363, 388, 1 L.Ed.2d 1403, 77 S.Ct.Rptr. 1152; *Hurtado v. California* (1884) 110 U.S. 516, 28 L.Ed. 232, 4 S.Ct.Rptr. 111.

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[4]See California Rules of Court, Rules 28(a) and 24(a); and California Constitution Article VI, Section 12.

Thus, when the California Supreme Court failed to apply California state law regarding res judicata, Rivcom was denied due process.

C. Petitioner Rivcom Was Denied Due Process Because The California Supreme Court Transferred And Decided 5 CIV 5121 On Its Own Motion Without Giving Rivcom Notice And An Opportunity To Be Heard

Due process under the Fourteenth Amendment of the United States Constitution requires notice and an opportunity to be heard prior to a deprivation of property (even a temporary deprivation of property). *Fuentes v. Shevin* (1972) 407 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct.Rptr. 1983, Reh. Den. 409 U.S. 902, 34 L.Ed.2d 165, 93 S.Ct.Rptr. 177; *In Re Mooney* (1934) 72 F.2d 503; *Twining v. New Jersey* (1908) 211 U.S. 78, 110, 29 S.Ct.Rptr. 14, 24, 53 L.Ed. 97.

Under both federal and state law, when the California Supreme Court transferred and decided 5 CIV 5121, on its own motion, without giving Rivcom notice and an opportunity to be heard, Rivcom was deprived of its Federal constitutional right of due process.

Under California law, the case of *Moore v. Cal. Minerals P. Corp.* (1953) 115 Cal.App.2d 834, 252 Pac.2d 1005, held that a court which rules on its own motion, sua sponte, it must nevertheless give notice and an opportunity to be heard prior to announcing its decision in order to guarantee due process of law. As the Court stated therein:

> "Elementary principles of due process support our conclusion that if, during trial, the court, sua sponte,

unearths a point of law which it deems to be decisive of the cause, the party against whom the decision impends, has the same right to be heard before the decision is announced that he has to produce evidence upon the issues of fact. Denial of that opportunity deprives defendant of a substantial right to which it was entitled by virtue of the guarantee of due process." at 115 Cal. App. 2d, page 837).

Under Federal law, the case of *Robinson v. Ariyoshi* (1977) 441 F.Supp. 559, held that where the State Supreme Court renders a decision sua sponte, and that decision is not directly related to the issues actually raised by the parties in the trial court, and where the parties are not given an opportunity to argue the issues raised by that sua sponte motion, there is a denial of due process under the Fourteenth Amendment of the United States Constitution. In accord is *Sotomura v. County of Hawaii* (1978) 460 F.Supp. 473.

In this case, prior to the California Supreme Court's decision in 5 CIV 5121 only three Petitions were pending before the Supreme Court (SF No. 24157, SF No. 24156, SF No. 24155). Rivcom had responded to each of those Petitions on May 14, 1980. Thereafter, the California Supreme Court, on July 3, 1980, ruled in favor of Rivcom by denying those three Petitions (presumably on the grounds raised in Rivcom's brief in opposition to the three Petitions).

Notwithstanding the decision in favor of Rivcom on all three Petitions, the California Supreme Court, on its own motion and without notice, transferred to itself 5 CIV 5121 and simultaneously reversed the Fifth District Court

of Appeal's earlier denial of the ALRB's Request for Temporary Relief.

At no time did Rivcom receive notice that the California Supreme Court would transfer to itself the ALRB's Request For Temporary Relief in 5 CIV 5121; nor did Rivcom receive notice of the grounds upon which the Supreme Court based its motion to transfer 5 CIV 5121; nor did Rivcom receive notice of the grounds on which the Supreme Court granted the ALRB's Request For Temporary Relief. Rivcom has no knowledge of the grounds upon which the California Supreme Court granted the ALRB's Application For Temporary Relief, especially in view of the fact that the ALRB's Petition For Writ of Mandate against the Fifth District Court of Appeal in SF No. 24155 was denied by the same Court.

Rivcom Corporation therefore petitioned the California Supreme Court For Rehearing on July 18, 1980 and requested the Court to issue a written opinion stating the reasons for its decision to grant the ALRB's Request For Temporary Relief in 5 CIV 5121 and further requested the California Supreme Court to then allow Rivcom an opportunity to respond to those reasons. However, Rivcom's Petition For Rehearing was denied on July 30, 1980.

Since the California Supreme Court denied all three Petitions before, Rivcom believes that the Supreme Court's reversal of the Fifth District Court of Appeal's prior decision in 5 CIV 5121 must be based on some other ground not contained within the three Petitions. But Rivcom has never received notice of what that ground is and Rivcom therefore has been denied the opportunity to respond to that ground.

D. Petitioner Rivcom Was Denied Due Process Because The California Supreme Court Failed To Issue A Written Opinion Or Statement Of Reasons When It Transferred And Decided 5 CIV 5121.

Under applicable Federal law, when the state deprives a party of property, due process under the Fourteenth Amendment of the United States Constitution requires a statement of reasons for the deprivation indicating the evidence relied upon (although the statement of reasons need not amount to a full opinion or even formal findings of fact and conclusions). *Shamie v. City of Pontiac* (1977) 443 F.Supp. 679, 682; *Perry v. Sindermann* (1972) 408 U.S. 593, 33 L.Ed. 2d 570, 92 S.Ct.Rptr. 2694; *Board of Regents v. Roth* (1972) 408 U.S. 564, 33 L.Ed. 2d 548, 92 S.Ct.Rptr. 2701; *Goldberg v. Kelly* (1969) 397 U.S. 254, 271, 25 L.Ed. 2d 287, 301, 90 S.Ct.Rptr. 1011.

When the California Supreme Court transferred and decided 5 CIV 5121, it did not issue any written opinion or statement of reasons in support of that decision notwithstanding the fact that Rivcom's interest in property was deprived by that decision. Rivcom was therefore denied due process under the Fourteenth Amendment of the United States Constitution.

1. The California Supreme Court's Failure To Issue An Opinion Or Statement Of Reasons Violated Applicable State Law, And Therefore Was a Denial Of Due Process

As noted above, where the state fails to follow its own Constitution and rules of law, that failure constitutes a denial of due process under the Fourteenth Amendment

of the United States Constitution. *Field v. Boyle, supra; Bluth v. Laird, supra; Olney Runs After v. Cheyenne River Sioux Tribe, supra; Solomon v. LaRose, supra; Drummond v. Froehlke, supra; Morton v. Ruiz; Viterelli v. Seaton, supra*; and *Service v. Dulles, supra.*

The California Constitution was violated when the California Supreme Court failed to issue a written opinion or statement of reasons upon transferring and deciding 5 CIV 5121.

The California Constitution, Article VI, Section 14 provides:

> "Decisions of the Supreme Court and Courts of Appeal that determine causes shall be in writing with reasons stated."

Metropolitan Water Dist. v. Adams (1942) 19 Cal.2d 463, 468, 122 Pac.2d 257, holds that although the granting or denial of a Request For Hearing or Rehearing does not constitute a "cause" within the meaning of Article VI, Section 14 of the California Constitution, nevertheless, if a hearing or rehearing is granted, a decision by the California Supreme Court following the hearing or rehearing *does constitute* a "cause" within the meaning of Article VI, Section 14 of the California Constitution.

In the instant case, (although the California Supreme Court's decision to transfer 5 CIV 5121 to itself does not constitute the determination of a "cause" required to be in writing under Article VI, Section 14 of the California Constitution), after the California Supreme Court transferred 5 CIV 5121, its decision to reverse the Appellate

Court did constitute a determination of a "cause" and was therefore required to be in writing.

Moreover, if Rivcom was to have an adequate opportunity to respond to the grounds upon which the California Supreme Court granted the ALRB's Request For Temporary Relief in 5 CIV 5121, the California Supreme Court should have issued a written decision stating the reasons for granting that request.

CONCLUSION

Petitioner Rivcom Corporation respectfully submits that the California Supreme Court's July 3, 1980 decision on its own motion to transfer 5 CIV 5121 from the Fifth District Court of Appeal to the Supreme Court and simultaneous granting of the ALRB's Request For Temporary Relief violated Rivcom's due process rights under the Fourteenth Amendment of the United States Constitution and therefore should be vacated. That California Supreme Court decision violated federal due process for each of the following reasons.

First. The transfer and decision was in excess of the California Supreme Court's jurisdiction because under the California Constitution, Article VI, Section 14, and the California Rules of Court, Rules 24(a) and 28(a), the California Supreme Court had no power to transfer and reverse the Fifth District Court of Appeals' decision in 5 CIV 5121 since the Court of Appeal's decision had already become final.

Second. The Appellate Court's denial of the ALRB's Request For Temporary Relief in 5 CIV 5121 had already become final and res judicata on all parties as well as the California Supreme Court; therefore, the California Supreme Court did not have jurisdiction to modify or alter that final decision.

Third. The California Supreme Court did not give Rivcom notice and an opportunity to respond to the California Supreme Court's sua sponte motion to transfer and reverse the Fifth District Court of Appeal's prior decision in 5 CIV 5121.

Fourth. When the California Supreme Court issued its decision in 5 CIV 5121 it failed to issue a written opinion or statement of reasons in support of that decision.

WHEREFORE, Petitioner Rivcom Corporation respectfully prays that this Honorable Court grant this Petition For Writ Of Certiorari and vacate the California Supreme Court's July 3, 1980 decision in 5 CIV 5121 and simultaneously declare that the Fifth District Court of Appeals prior decision in 5 CIV 5121 remains in full force and effect.

In the alternative, Petitioner Rivcom Corporation respectfully prays that this Honorable Court issue an Order requiring the California Supreme Court to issue a written opinion or statement setting forth the reasons for its July 3, 1980 transfer and decision in 5 CIV 5121 and requiring

the California Supreme Court to then provide Rivcom Corporation with an opportunity to present arguments in opposition to that written decision.

THOMAS E. CAMPAGNE
THE LAW FIRM OF
THOMAS E. CAMPAGNE
A PROFESSIONAL CORPORATION
Attorneys For Petitioner
Rivcom Corporation

(Appendices follow)

Appendix A

5th Civil No. 5121

In the Supreme Court of The State of California

In Bank

Rivcom Corporation et al., Petitioners,

v.

Agricultural Labor Relations Board et al., Respondents.

[Filed July 3, 1980]

Bird, C.J., did not participate.

The employer's petition for writ of review and the board's application for temporary relief in the above entitled cause are transferred to this court on the court's own motion. Pending determination of the petition for writ of review, all proceedings in action No. MC 1913 entitled Rivcom, Inc., etc., Catarino G. Rangel, et al., in the Municipal Court of Ventura County, are hereby stayed. The petition for writ of review is retransferred to the Court of Appeal, Fifth District.

/s/ Tobriner,
Acting Chief Justice

/s/ Manuel
Justice

/s/ Newman
Justice

/s/ Mosk per PJB
Justice

Appendix B

In the Court of Appeal of the State of California

Fifth Appellate District

5 Civil No. 5121
(5 ALRB No. 55)

Rivcom Corporation,
Riverbend Farms, Inc., and
Triple M Farms, Inc.,
Petitioners,

v.

Agricultural Labor Relations Board,
Respondent;
United Farm Workers of America,
AFL-CIO,
Real Party in Interest.

[Filed February 19, 1980]

BY THE COURT:*

If the municipal court declines to stay enforcement of its unlawful detainer judgment pending appeal in the case of Rivcom, Inc. v. Catarino G. Rangel et al., No. MC Consolidated 1913 (Code Civ. Proc., § 1174, subd. (a)), petitioner Rivcom Corporation and petitioner Riverbend Farms, Inc. are each directed to refrain from enforcing any judgment obtained in said action for a period of ten days from the entry of said judgment to permit respondent

*Before Brown (Geo.A.), P. J., Hopper, J., and Ballantyne, J.

Agricultural Labor Relations Board to seek appropriate relief from the enforcement of said judgment. (See People ex rel. S. F. Bay etc. Com. v. Town of Emeryville (1968) 69 Cal.2d 533, 536).

To the extent that respondent Agricultural Labor Relations Board requests additional relief in its petition for interim relief, said petition for interim relief is denied. Respondent Agrcultural Labor Relations Board has failed to establish that the execution of a writ of restitution in Rivcom, Inc. v. Catarino G. Rangel, et al., No. MC Consolidated 1913 sufficiently threatens the jurisdiction of this court in the case of Rivcom Corporation et al. v. Agricultural Labor Relations Board et al., 5 Civil 5121, so as to justify interim relief. (Compare People ex rel. S. F. Bay etc. Com. v. Town of Emeryville, supra, 69 Cal.2d 533.)

(Justice Hopper is of the opinion that a stay should be granted pending determination of the petition for review in 5 Civil 5121 or further order of this court.)

Dated:

/s/ Brown, Geo.A. P.J.

Appendix C

Order Denying Alternative Writ

S.F. No. 24155

In the Supreme Court of the State of California

In Bank

Agricultural Labor Relations Board, Petitioner

v.

Court of Appeal, Fifth Appellate District, Respondent;
Rivcom, Inc., Real Party in Interest

Bird, C.J., did not participate.

[Filed July 3, 1980]

Petition for writ of mandate denied.

/s/ Tobriner
Acting Chief Justice

Appendix D

Order Denying Alternative Writ

S.F. No. 24156

In the Supreme Court of the State of California

In Bank

Agricultural Labor Relations Board, Petitioner

v.

Municipal Court, Ventura County Judicial District,
Respondent;
Rivcom, Inc., Real Party in Interest

Bird, C.J., did not participate.

[Filed July 3, 1980]

Petition for writ of mandate and/or certiorari denied.

/s/ Tobriner
Acting Chief Justice

Appendix E

Order Denying Alternative Writ

S.F. No. 24157

In the Supreme Court of the State of California

In Bank

Alamillo et al., Petitioners,

v.

The Municipal Court of Ventura County, Respondent;
Rivcom, Inc., and Agricultural Labor Relations Board,
Real Parties in Interest.

Bird, C.J., did not participate.

[Filed July 3, 1980]

Petition for writ of mandate and/or prohibition denied.

/s/ Tobriner
Acting Chief Justice

Appendix F[1]

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102
July 30, 1980

I have this day filed Order

Hearing Denied

In re: 5 Civ. No. 5121

Rivcom Corporation et al.

vs.

Agricultural Labor Relations Board and
United Farm Workers of America, AFL-CIO

Respectfully

Clerk

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[1]The original of this appendix was a postcard.

Appendix G

Amendment 14 to U.S. Constitution

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix H

§ 12. Supreme Court; transfer of causes

Sec. 12. The Supreme Court may, before decision becomes final, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction. (Added Nov. 8, 1966.)

Appendix I

§ 14. Publication of opinions; decisions of Supreme Court and courts of appeal

Sec. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated. (Added Nov. 8, 1966.)

Appendix J

Rule 24. Decision of Reviewing Court

(a) [When decisions become final] All decisions of the reviewing courts shall be filed with the clerk, who shall forthwith transmit a copy of the opinion to the lower court or tribunal and to the parties. A decision of the Supreme Court becomes final 30 days after filing unless the court orders a shorter time or, prior to the expiration of the 30 day period or any extension thereof, orders one or more additional periods of time not to exceed a total of 60 additional days. A decision of a Court of Appeal becomes final as to that court 30 days after filing, except that the decision becomes final as to that court immediately after filing upon the denial of a petition for a writ within its original jurisdiction or a writ of supersedeas, without issuance of an alternative writ or order to show cause, or the denial of an application for bail or to reduce bail pending appeal, or the denial of a transfer to a Court of Appeal after certification in a case within the original jurisdiction of a municipal or justice court. When a decision of a Court of Appeal is final as to said court, it is not thereafter subject to modification or rehearing by said court. Where an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is modified during that time, the period specified herein begins to run anew, as of the date of modification.

Appendix K

Rule 28. Hearing in Supreme Court[1]

(a) [Time within which court may grant hearing] Within 30 days after a decision of a Court of Appeal becomes final as to that court, the Supreme Court, on its own motion, or on petition as provided in subdivision (b), may order the cause transferred to itself for hearing and decision, and within the original 30-day period or any extension thereof the Supreme Court may for good cause extend the time for one or more additional periods not to exceed a total of an additional 60 days.

Supreme Court, U. S.
FILED
NOV 12 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-494

RIVCOM CORPORATION,
Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD; AND UNITED FARM WORKERS OF AMERICA, AFL-CIO; RIVERBEND FARMS, INC.; TRIPLE M FARMS, INC.
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-494

RIVCOM CORPORATION,

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD; AND UNITED FARM WORKERS OF AMERICA, AFL-CIO; RIVERBEND FARMS, INC.; TRIPLE M FARMS, INC.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Does a petition for certiorary which challenges the issuance by a state supreme court of a temporary and interim stay in conjunction with a proceeding pending before a state court of appeal raise a substantial federal question?

STATEMENT OF THE CASE

A. INTRODUCTION: The Agricultural Labor Relations Act (ALRA)

For decades California has witnessed strife and conflict in its fields and vineyards. Federal labor laws have brought no relief to the California fields because those statutes exempt agricultural employees from their coverage. (29 U.S.C. §§ 152(c), 203(f).)

To bring "certainty and a sense of fair play" to an "unstable and potentially volatile condition," (ALRA Preamble, Cal.Stats. 1975, Third Ex. Sess., ch. 1, § 1) the California Legislature enacted the Agricultural Labor Relations Act of 1975 (hereinafter "ALRA" or the "Act"). (Cal. Lab. Code §§ 1140, et seq.) A comprehensive agricultural labor relations statute, the ALRA establishes a five-member Agricultural Labor Relations Board (hereinafter "ALRB" or "Board") (Cal. Lab. Code § 1141); grants employees organizational rights (Cal. Lab. Code § 1152); provides for secret ballot elections to select a collective bargaining representative or no union (Cal. Lab. Code §§ 1156–1159); and characterizes a variety of acts by employers or unions as unfair labor practices, including interference with employees' rights. (Cal. Lab. Code §§ 1153–1155.7.)

The Act is modeled in some respects on the National Labor Relations Act. Section 1160.3 of the Act (Cal. Lab. Code § 1160.3) provides for issuance by the Board of a decision and order following an administrative adjudication of unfair labor practice complaints filed by the General Counsel. (Cf., 29 U.S.C. § 160(c).) Section 1160.8 (Cal. Lab. Code § 1160.8) provides that any person aggrieved by the final order of the Board may obtain a

review of such order in the court of appeal. The court of appeal wherein a petition for review of a Board decision and order is pending has jurisdiction "to grant to the board such temporary relief or restraining order it deems just and proper." (Cal. Lab. Code § 1160.8; Cf., 29 U.S.C. § 160(f).)

B. The Decision of the ALRB in the Instant Case

On August 17, 1979, respondent issued a decision and order in *Rivcom, Inc. and Riverbend Farms* (1979) 5 ALRB No. 55. That decision found petitioner Rivcom, Inc. to be a successor employer to National Property Management Systems, Inc., and obligated it to bargain with United Farm Workers of America, AFL-CIO (UFW), which had won exclusive representative status in an ALRB election held on May 9, 1978. The Board found that Rivcom's conduct in evicting its employee-tenants violated sections 1153(a) and (c) of the ALRA (Cal. Lab. Code §§ 1153(a), (c)) and, accordingly, ordered Rivcom to cease and desist from attempting to evict or evicting the employees at Rivcom-leased land.

The Board's decision stemmed from charges filed by the UFW against petitioner charging the employer, with, inter alia, attempting to evict worker tenants because of their support for the UFW. The ALRB's General Counsel issued a complaint, and an 18-day hearing was held from March 1 through April 13, 1979.

C. The Eviction Proceedings in the Municipal Court

On the same day that the ALRB hearing commenced, Rivcom filed civil complaints for unlawful detainer (Cal.

Civ. Proc. Code § 1161, et seq.) in the Ventura County Municipal Court. Additional complaints were filed the next day, March 2, 1979, and also in mid-April 1979. In total, approximately 10 complaints were filed seeking to evict 94 families from employment-related housing.

On May 11, 1979, respondent ALRB moved to intervene in each action and further moved to stay the proceedings pending a final decision of the Board. The municipal court denied the Board's motions to stay and to intervene. On April 6, 1979, the Board issued an order directing the Administrative Law Officer (ALO) who was hearing the unfair labor practice matter to expedite the proceedings. On June 13, 1979, the ALO issued his recommended order. The recommended order included a requirement that petitioner cease and desist from attempting to evict its farmworker tenants.

On July 3, 1979, respondent again requested leave of the municipal court to intervene in the pending unlawful detainer proceedings. On August 2, 1979, the court again denied the Board's request.

On August 16, 1979, the ALRB issued its decision after review of the administrative record and of the briefs submitted by the parties. The Board unanimously upheld the ALO's findings and order, and, as noted above, ordered petitioner Rivcom to cease and desist from "attempting to evict or evicting, those employees from housing at Rivcom Ranch."

On September 13, 1979, petitioner filed a petition for review of the Board's order in the Court of Appeal for the Fifth Appellate District, pursuant to California La-

bor Code section 1160.8 (Cf., 29 U.S.C. § 160(f).) The consolidated municipal court trial commenced on October 22, 1979, the defendants therein asserting an affirmative defense of retaliatory eviction and a claim that the Board's order was conclusive on the court and the parties.[1]

On October 15, 1979, respondent ALRB filed with the Court of Appeal for the Fifth Appellate District a petition for temporary relief under California Labor Code section 1160.8, seeking an order from that court temporarily restraining the municipal court eviction proceedings pending review by the appellate court of Rivcom's petition for review of the Board decision. That request was denied as premature, without prejudice to refiling in the event of an ultimate judgment in favor of the landlord.

The municipal court trial concluded on December 30, 1979, after 31 days of testimony.

On January 18, 1980, after receiving two 30-day extensions of time, petitioner Rivcom filed its brief on the merits in the proceeding in the appellate court to review the decision of the Board. Respondent ALRB filed its brief on February 21.

On January 24, 1980, the muncipal court issued a "Statement of Intended Decision" in which the court

[1] Petitioner initiated both the municipal court eviction action and the appellate court proceeding for review of the Board's order. Petitioner's apparent aim is to complete the eviction of the farmworkers through the municipal court action and thereby render the proceedings in the appellate court moot insofar as they relate to the eviction of the farmworkers.

indicated its intent to rule in favor of the landlord/employer Rivcom and against the tenants. In light of the municipal court's intent, on January 29, respondent Board filed a second request for temporary relief in the Court of Appeal; the court again denied the Board's request on February 19, 1980. However, the appellate court did order that in the event the municipal court declined on its own to stay enforcement of its judgment, enforcement thereof would be ordered stayed for a period of 10 days to enable the Board to seek relief from the California Supreme Court.

On April 24, 1980, the municipal court filed its Findings of Fact and Conclusions of Law. Judgment for plaintiff Rivcom was entered on April 26, 1980; the municipal court declined to stay enforcement of the judgment of eviction.

D. Proceedings in the California Supreme Court

Pursuant to the 10-day stay order of the appellate court, respondent ALRB initiated in the Supreme Court two proceedings to arrest the eviction of the farmworkers pending disposition on the merits of Rivcom's petition to review the decision and order of the Board. Respondent filed a petition for writ of mandate naming the appellate court as a respondent, and also filed a petition for certiorari naming the municipal court as a respondent. The former petition alleged, in substance, that the Court of Appeal had abused its discretion by refusing to grant the Board's requested temorary relief pending adjudication of the merits of Rivcom's petition to review the Board's decision and order. The action

against the municipal court alleged, in substance, that the court had acted in excess of its jurisdiction by entering a judgment of eviction in favor of Rivcom in the face of a decision of the ALRB finding the Rivcom's attempt to evict the farmworkers to be an unfair labor practice.

On July 3, 1980, the California Supreme Court denied both petitions of the ALRB (Petitioner's Appendices C and D). However, by order of the same day, the Supreme Court transferred to itself the entire proceeding to review the decision and order of the Board then pending in the Court of Appeal. Having thus acquired jurisdiction of the case, the Supreme Court issued its own stay order and, thereafter, retransferred the merits of the review proceeding to the Court of Appeal for further proceedings. (Petitioner's Appendix A.)

E. Petitioner's Contentions

Petitioner contends (1) that the sua sponte transfer of the case by the Supreme Court was outside of and in excess of the Supreme Court's jurisdicition under the California Constitution and the California Rules of Court; (2) that the stay order issued by the Supreme Court was barred by res judicata; and (3) that petitioner was entitled to a statement of reasons for the stay order. Each argument is without merit.

ARGUMENT

I

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE PETITION SINCE THE CASE IS

ONE CONTROLLED BY STATE LAW AND PROCEDURE, AND SINCE THE CALIFORNIA SUPREME COURT WAS WELL WITHIN ITS JURISDICTION TO TRANSFER TO ITSELF THE CAUSE THEN PENDING BEFORE THE COURT OF APPEAL

The California Supreme Court's authority to transfer a case to itself is grounded in Article VI, section 12 of the California Constitution, which has long been interpreted to allow the Supreme Court to transfer to itself *any* case pending in a court of appeal without notice and without the assignment of any reason, or the existence of any reason, except the court's own discretion. (*People* v. *Davis* (1905) 147 Cal. 346, 81 P. 718; see also, Note, *California Supreme Court Review: Hearing Cases on Court's Own Motion,* 41 So.Cal.L.Rev. 749 (1968) .) Once a case is before the Supreme Court, long-settled California law (codified in section 923 of the California Code of Civil Procedure) authorizes the court to make "any order appropriate to preseve the status quo, the effectiveness of the judgment subsequently to be entered or otherwise in aid of its jurisdiction." (Cal.Civ.Proc.Code § 923; Cf., Fed.R.Civ.P. 62(g) .) The power is inherent and not dependent on statute. (See *People ex rel. S.F. Bay, Etc. Com.* v. *Town of Emeryville* (1968) 69 Cal.2d 533, 446 P.2d 790.)

Petitioner's contention that there was no jurisdiction to transfer the case because more than 60 days had passed since the Court of Appeal had issued its "decision" denying the ALRB's request for interim relief rests on the erroneous belief that the "action" by the Court

of Appeal was a "decision" within the meaning of the California Constitution and Rules of Court. California Rules of Court (Rules 20 and 28) and Article VI, section 12 of the California Constitution plainly allow transfer of an entire case (as occurred here) before decision on the merits of that case.[2] No decision on the merits of petitioner's challenge to the ALRB's unfair labor practice findings has yet issued from the Court of Appeal; hence, since there has to date been no decision or opinion within the meaning of Rule 28, the California Supreme Court was authorized to transfer the entire case to itself.

II

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE PETITION BECAUSE THE DOCTRINE OF RES JUDICATA DOES NOT APPLY TO THE STATE SUPREME COURT'S STAY ORDER

Petitioner's contention that the state Supreme Court

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[2] Rules 28 and Article VI, section 12 may be found at petitioner's Appendices K and H. Rule 20 reads as follows: "*The transfer of causes* from the Supreme Court to a Court of Appeal, or *from a Court of Appeal to the Supreme Court*, or from one Court of Appeal to another, or from one division thereof to another, may be made only on order of the Supreme Court. The clerk of the court from which the cause is transferred shall immediately transmit to the other court the original record, briefs and all original papers and exhibits on file in the cause. If the transfer is made because the appeal is taken to the wrong court, the order may direct the appellant to pay the clerk of the court to which the cause is transferred the fee required by law for the filing of the record in the first instance. If it is so ordered and the appellant fails to pay such fee within 20 days after the mailing of the notice by the clerk that the record has been transmitted to his office and that such filing fee must be paid, the appeal may be dismissed." (Emphasis added.)

could not issue the stay order because the previous refusal by the Court of Appeal to stay the evictions precluded future stays under the doctrine of res judicata is fatally flawed. First, the Court of Appeal had acted on a request for a *stay,* which, under California law, is an interlocutory order and is not a final judgment. (*Gibson* v. *Savings and Loan Commissioner* (1970) 6 Cal.App.3d 269, 85 Cal.Rptr. 799.) Under California law, no res judicata effect is given to interlocutory orders. (*Weak* v. *Weak* (1962) 202 Cal.App.2d 632, 634, 21 Cal.Rptr. 9.) Second, the order for which res judicata effect is claimed was, by its own terms, not intended by the Court of Appeal to be final unless the municipal court refused sua sponte to stay execution of its judgment and, even then, not until the expiration of ten days thereafter. Review in the California Supreme Court was sought by the ALRB within those ten days.

III

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY PETITIONER'S CLAIM THAT IT WAS ENTITLED TO A STATEMENT OF REASONS FOR THE STATE SUPREME COURT'S ISSUANCE OF A STAY ORDER

Petitioner's claim that it was entitled to a statement of reasons for the Supreme Court's stay order is similarly controlled by state law. Under the California Constitution, Article VI, section 14, "Decisions of the Supreme Court and courts of appeal that *determine causes* shall be in writing with reasons stated." (Emphasis added.) This section has been consistently interpreted to apply

only to decisions which finally dispose of the case. (*Funeral Dir. Assn.* v. *Bd. of Funeral Dirs.* (1943) 22 Cal.2d 104, 106; 136 P.2d 785.) The stay order issued by the Supreme Court merely preserves the status quo *pending the determination of the cause,* i.e., the entire proceeding for review of the ALRB's unfair labor practice order. The final decision of the Court of Appeal in that cause will be in writing; but there is no constitutional or statutory requirement that a stay order entered pursuant to the court's inherent powers to preserve its jurisdiction must be in writing with reasons stated. (Compare this Court's action in *Central South Carolina Chapter, Society of Professional Journalists* v. *Martin* (1977) 431 U.S. 928.)

CONCLUSION

For the reason that no substantial federal question is presented by the petition for certiorari in this matter, the same should be denied.

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Respectfully submitted,

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